

Opinion of the Court.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY v. UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 83. Argued December 4, 1924.—Decided March 2, 1925.

A railroad company which made out and presented freight bills to the Government for net transportation charges after making land grant deductions, and accepted without protest payment of the amount so claimed,—held not entitled to recover upon the ground that the Government should not have been allowed the deductions.

58 Ct. Cls. 33, affirmed.

APPEAL from a judgment of the Court of Claims rejecting the Railroad's claim for transportation of freight.

*Mr. Benjamin Carter*, for appellant.

*Mr. Blackburn Esterline*, Assistant to the Solicitor General, for the United States, submitted.

MR. JUSTICE BUTLER delivered the opinion of the Court.

Appellant brought this action, October 29, 1917, to recover the amounts by which freight charges on certain materials transported over its railroad were reduced by the application of government land-grant rates. All the freight was transported on government bills of lading and moved in whole or in part by the use of appellant's land-aided lines of railroad. The shipments, including coal, sand, cement, piling and lumber, were made in the years 1909 to 1916, inclusive. Some of appellant's lines of railroads were constructed by the aid of land granted by an Act of Congress of May 12, 1864, § 3, c. 84, 13 Stat. 73. See *Lake Superior & Mississippi R. R. Co. v. United States*, 93 U. S. 442; Act of August 5, 1882, c. 390, 22 Stat. 261. The appellant deemed the United States to be entitled to have its property transported over such

lines at 50 per cent. of the tariff rates. Two of appellant's lines of railroad in Minnesota were constructed by the aid of land granted by an Act of Congress of July 4, 1866, § 3, c. 168, 14 Stat. 88. Appellant made no charges for the shipments that moved over these lines. Appellant alleged that when it received and transported such freight it believed it belonged to the United States, and had no intimation that the shipments were private property until the latter part of 1916. The Court of Claims held that all the shipments belonged to the United States, and that it was entitled to transportation of its property at 50 per cent. of the tariff rates on the aided lines first above referred to and to free transportation on those last mentioned, and found that it was not shown whether appellant was informed as to the title to the property.

The court further found that in every instance appellant made out and presented freight bills to the Government for the net charges after making proper land grant deductions, and that the payment of the full amount so claimed was made and accepted without protest. Appellant is not entitled to recover. *Louisville & Nashville R. R. v. United States*, decided this day, *ante*, p. 395, and cases cited.

*Judgment affirmed.*